BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	
Implementation of the Telecommunications Act of 1996:	**CC Docket No. 96-152**
Telemessaging, Electronic Publishing, and Alarm Monitoring Services	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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CC Docket No. 96-152

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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SUMMARY*

The need for the Commission to exercise restraint in this proceeding has significant support in several parties' well-reasoned comments. SBC again urges the Commission to adopt no rule unless necessary to resolve undisputed ambiguity in statutory language. It should not in any event alter the rights and obligations that Congress settled upon.

Certain commentors see this proceeding as an opportunity to erect a regulatory Christmas tree on which they also seek to hang a variety of ornaments. Their suggestions, if adopted, would radically alter the rights and obligations that Congress crafted in this legislation. The Commission should resist these parties' invitations to engage in de facto legislation.

The "operated independently" requirements of the electronic publishing statute are sufficient and exclusive. Congress neither intended additional requirements nor contemplated that the Commission would promulgate any. The various electronic publishing transactional requirements are likewise sufficiently succinct and specific such that some commentors' attempts to add new and different language to them should be rejected.

To the extent that the Commission must adopt rules, it should conclude that, where applicable, the structural separation and transactional requirements of the electronic publishing statute must yield to the joint marketing freedoms conferred by Congress regarding in-bound telemarketing, referral services, teaming and business arrangements. So too, the Commission should conclude that the general joint marketing prohibitions must yield to these specific joint marketing freedoms. In each of these regards, the Commission has on several occasions announced its support for one-stop shopping, and it should not miss this opportunity to reaffirm that support.

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* All abbreviations used herein are referenced within the text.

Such a reaffirmation will ensure that the efficiencies and customer convenience of one-stop shopping will be maximized.

The alarm monitoring statute only prohibits BOC "provision" of alarm monitoring services. Thus, the Commission should conclude that the providing of alarm CPE, rendering of billing and collection services, and entry into a sales agency arrangement with an unaffiliated alarm monitoring service provider, do not constitute the "provision" of alarm monitoring service, either individually or collectively.

The Commission should not impose a separate subsidiary or colocation requirement, or other burdens and requirements, in connection with telemessaging services.

In sum, the Commission should not seek to "supplement" the statutory schemes put into place by Congress. Rather, the Commission should stay as true as possible to the statutory language chosen by Congress, while also reaffirming its commitment to the efficiencies and customer convenience of one-stop shopping in accordance with SBC's comments.

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REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC"), by its attorneys and on behalf of its subsidiaries, hereby offers these reply comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-referenced docket, regarding the non-accounting portions of the Telecommunications Act of 1996 ("Act") relating to telemessaging, electronic publishing and alarm monitoring.[1]

I. INTRODUCTION

Many commentors have suggested, as did SBC, that the Commission should exercise restraint in adopting rules in this proceeding. These suggestions are well taken and are in accord with Congress' own direction.

For example, with respect to the electronic publishing statute, Congress neither directed nor contemplated that the statute should be supplemented through the adoption of additional Commission rules, other than those necessary to prescribe the manner of valuing and recording asset transfers pursuant to Section 274(b)(4). So too, with respect to the telemessaging and alarm

[1] SBC's references to the comments of parties to this proceeding employ the abbreviations used by those commentors.

monitoring statutes, Congress has only directed the Commission to establish internal procedures for the receipt and review of complaints concerning violations of the safeguards provided for by Section 260(a) and Section 275(b), respectively. Otherwise, there is no statutory mandate that the Commission adopt any rules to implement these statutes.[2]

In light of these considerations, Congress did not contemplate that the Commission would adopt extensive or burdensome substantive rules to implement the structural separation and joint marketing requirements of Section 274, or the nondiscrimination safeguards and other provisions of Section 260 and 275. With respect to all of these statutes, the Commission should therefore neither add to nor modify the words of the statute. Instead, the Commission should remain true to the words as written, and should avoid taking any action that would impose new or different obligations never intended by Congress.

Should the Commission adopt any rules to implement the electronic publishing statute, it should not miss the opportunity to reaffirm its often-stated commitment to the efficiencies and customer convenience advanced by "one-stop shopping." Specific suggestions were made by SBC and other commentors as to how the Commission can continue to fulfill its commitment in this regard. The Commission should adopt these suggestions in its consideration of the electronic publishing joint marketing freedoms conferred by Congress.

Finally, with the filing of these and others' replies in this matter, the Commission should conclude that the various activities posited by it do not constitute the "provision" of alarm monitoring services non-provisioning activities. Thus, it should separately, and expeditiously, approve the Security Service CEI Plan filed by Southwestern Bell Telephone Company ("SWBT").

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[2] SBC, at 2, n. 3.

II. BOC PROVISION OF ELECTRONIC PUBLISHING -- SECTION 274

A. The "Operated Independently" Requirements Itemized at Section 274(b), paragraphs (1) through (9), Are Sufficient and Exclusive. (NPRM, para. 35)

As SBC pointed out in its initial comments, Congress defined the "operated independently" standard of Section 274(b) by specific reference to the nine indented paragraphs which immediately follow subsection (b).[3] Congress intended that these specific requirements be sufficient and exclusive. The Commission should not adopt any additional regulatory requirements.

Although most commentors agree,[4] AT&T claims that the Commission is authorized to adopt "whatever additional regulations it deems necessary" beyond the nine subsections of Section 247(b).[5] Time Warner suggests that the Commission adopt at least seven additional requirements.[6] However, neither AT&T nor Time Warner explains how the structure of subsection (b) or the specificity of paragraphs (1) and (9) lend themselves to adding to the requirements set forth by Congress. Moreover, both must concede that had Congress intended to adopt any of the additional requirements proposed by them, it could have easily done so. Under these circumstances, the Commission should decline AT&T's and Time Warner's invitations for it to engage in de facto legislation.

Moreover, the Commission has regarded the similar phrase "operate independently" in its Computer II and cellular separation rules[7] as but descriptive of the rules' itemized requirements, not

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[3] SBC, at 5.

[4] E.g., Bell Atlantic, at 5-6; BellSouth, at 9-11; USTA, at 4; YPPA, at 3-4.

[5] AT&T, at 14.

[6] Time Warner, at 12-13.

[7] 47 C.F.R. Section 64.702(c) and 47 C.F.R. Section 22.903(b), respectively.

as an additional basis for imposing more requirements.[8] Given this prior treatment of similar phraseology, and Congress' own specification of the requirements it deemed necessary to ensure operational independence, the Commission should not take it upon itself to prescribe additional requirements.

Finally, adopting additional requirements beyond those established by Congress would negate the operational efficiencies and economies of scope that would benefit consumers in both the wireline and electronic publishing markets.[9] Prescribing additional requirements would also hinder the Commission in its stated intention "to eliminate artificial and statutory and regulatory barriers."[10] These considerations militate toward less, not more, regulation.

B. The Commission Should Ensure That Any Rules Defining Electronic Publishing Are Consistent With the Express Words of the Statute. (NPRM, paras. 32-34)

In most regards, the definition of "electronic publishing" provided for by Section 274(h) is sufficiently detailed and specific such that additional rules to implement the statute are unnecessary. To the extent that the Commission disagrees, however, various parties have advanced reasonable interpretations which deserve strong Commission consideration.

First, the Commission should confirm that a BOC and any of its affiliates (whether separated or not) are entitled to engage in electronic publishing not disseminated by either the BOC's or its affiliate's basic telephone service.[11] This is but the converse of the Commission's correct tentative

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[8] See, YPPA, at 4; Bell Atlantic at 5-6.

[9] See, NPRM, at para. 5.

[10] NPRM, at para. 5.

[11] SBC, at 4.

conclusion that either a BOC's separated affiliate or an electronic publishing joint venture may engage in the provision of electronic publishing disseminated by means of the BOC's or its affiliate's basic telephone service.[12]

For example, the Commission should confirm that dissemination of electronic publishing by a BOC's "basic telephone service" necessarily requires that the electronic publishing information be disseminated by the BOC's provision of exchange service -- i.e., dissemination by making a local call.[13] As Ameritech has explained in detail, the definition of "basic telephone service" refers to "telephone exchange service," not "exchange access." Thus, if the BOC originates or terminates a toll call disseminating the electronic publishing information, it is "exchange access," not "exchange service," being provided, and the BOC is not basic telephone service which is the predicate for the dissemination of electronic publishing. As a result, for example, where the database used to provide the service at issue is outside of the BOC's service territory and thus accessible only by the BOC's provision of exchange access, the configuration does not amount to "electronic publishing" covered by Section 274.[14]

Second, the Commission should adopt NYNEX's suggestion that a service in which the BOC merely provides access to another entity's content, where the BOC has no financial interest in or control of the underlying information, should not be considered electronic publishing.[15] Under Section 274(h)(2)(B), "transmission of information as a common carrier" does not constitute

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[12] NPRM, at para. 32.

[13] Ameritech, at 7.

[14] Ameritech, at 7-8.

[15] NYNEX, at 6-8.

electronic publishing. Similarly, Section 274(h)(2)(M) excludes from the definition of electronic publishing "[a]ny other network service of a type that is like or similar to these network services and that does not involve the generation or alteration of the content of information."

Third, the Commission should give effect to the "gateway" exception provided for by Section 274(h)(2)(C). The exception is similar to that of the common carriage exception noted above, in that the content of the information accessible through the gateway is information supplied by others and not generated or altered by the BOC. As explained by Ameritech, an "information gateway service permits users of an on-line service to obtain access to information supplied by other providers."[16] Accordingly, in the context of the Internet, a "gateway service" would include access to home pages with electronic links to worldwide web sites and home pages of other entities. It would also include "introductory information content," which would encompass the names and descriptions, links to and categorizations of other electronic publishers' sites. Similarly, a software browser should not be considered electronic publishing within Section 274(h)(1), and in any event be considered to be part of a "navigational system" under Section 274(h)(2)(C) and thus excluded from the definition of electronic publishing.[17]

In sum, there is no particular need for rules to implement the definitional provisions of Section 274(h). To the extent that the Commission concludes otherwise, it should confirm that the several parties' suggestions as stated above are well taken and should be adopted.

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[16] Ameritech, at 9, & n. 21.

[17] Bell Atlantic/NAA, at 4-5. SBC agrees with Bell Atlantic/NAA that Congress considered Section 274 to be largely self-executing and did not envision extensive rulemaking by the Commission to implement it. To the extent that the Commission disagrees, SBC supports the principles advanced in Bell Atlantic/NAA's joint comments.

C. The "Incurring Debt" Provisions Should Not Be Expanded to Address Assets Other Than Those of the BOC. (NPRM, paras. 36-38)

Section 274(b)(2) simply and succinctly states that neither the BOC nor a separated affiliate or joint venture may incur debt in a manner that would permit a creditor to have recourse to the assets of the BOC in the event of default. As SBC earlier urged, this statute is sufficiently clear such that the Commission need not establish any specific rules attempting to predict the types of activities that might be contemplated by this provision.[18]

MCI argues that the Commission should adopt a rule precluding a BOC's holding company from incurring any debt on behalf of its electronic publishing affiliate.[19] MCI overlooks, however, that subsection (b)(2) is directed only to a BOC, its separated affiliate, or a joint venture. Nowhere does the subsection refer to, much less prohibit, transactions that would be entered into by a BOC's holding company (nor, for that matter, does any portion of Section 274 refer specifically to a BOC's holding company). The Commission should not, therefore, adopt MCI's suggestion.

D. The Ban on Common "Ownership" of Property Does Not Preclude Sharing or Leasing of Property. (NPRM, paras. 39-42)

Section 274(b)(5)(B) provides that a BOC and its separated affiliate may "own no property in common." As several commentors have pointed out, this provision is clear on its face. It does not prohibit shared lease arrangements, landlord-tenant relationships or other property arrangements that fall short of common ownership.[20] So long as the transactional requirements of Section

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[18] SBC, at 6.

[19] MCI, i., & 4.

[20] See, BellSouth, at 15; see also, Ameritech, at 13; NAA, at 5; NYNEX, at 9-10; US WEST, at 19; USTA, at 4; YPPA, at 4.

274(b)(3) are satisfied, a BOC and its separated affiliate may lease or otherwise share real and personal property from each other, and may also lease real property from a common landlord in the same building.[21]

The Commission should reject AT&T's argument that "a joint lease would obviously result in a prohibited common property interest."[22] AT&T does not explain how a joint lease is a prohibited ownership interest, and clearly the two are not synonymous. Notably, neither MCI nor Time Warner (whose overall comments are otherwise at odds with those of SBC) maintain that the common ownership ban reaches sharing or leasing arrangements. Instead, their comments are limited to common or joint ownership of property.[23]

The Commission should also reject AT&T's suggestion that an affiliate independent of both the BOC and its separated affiliate should not be permitted to own property for the use of both the BOC and the separated affiliate.[24] Section 274(b)(5), like the other portions of subsection (b), are directed to the BOC and its separated affiliate, and to no other entity.

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[21] US WEST, at 19.

[22] AT&T, at 17.

[23] See, MCI, at 5; Time Warner, at 17.

[24] Id.

E. <u>The Separation Requirements Regarding Officers, Directors and Employees Do Not Apply to Joint Ventures and Are in Any Event Subject to the Joint Marketing Freedoms Allowed BOCs by Congress</u>. (NPRM, paras. 39-40)

Section 274(b)(5)(A) provides that a BOC and its separated affiliates shall "have no officers, directors, and employees in common." The meaning of this requirement is clear. No officer, director or employee of a BOC may also be an officer, director or employee of the separated affiliate.[25] SBC and other commentors have pointed out, however, that the dual employment prohibition may not be construed to limit otherwise permitted joint marketing activities pursuant to Section 274(c)(2).[26]

In contrast, AT&T broadly asserts that the common employment prohibition prohibits BOC personnel from participating in the operation, planning, marketing or other activities of the separated affiliate.[27] This claim must be rejected for the reasons stated in SBC's initial comments.[28] However, other factors also sufficiently counter AT&T's broad claim.

First, AT&T itself concedes that an "exception" applies with respect to in-bound telemarketing or referral services provided by a BOC under Section 274(c)(2)(A),[29] and MCI's comments implicitly assume that the separation requirement of Section 274(b)(5)(A) nonetheless permits the BOC to provide services in support of joint activities undertaken pursuant to Section

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[25] BellSouth, at 15.

[26] SBC, at 7; BellSouth, at 15.

[27] AT&T, at 16.

[28] SBC, at 8, 12-18.

[29] AT&T, at 16.

274(c).[30] Second, AT&T does not address the Commission's correct observation that the teaming and business arrangements permitted by Section 274(c)(2)(B) "appear[ ] to permit a BOC to participate in any type of business arrangement to engage in electronic publishing."[31] Third, AT&T fails to address the Commission's frankly stated rhetorical question as to how BOCs could engage in joint marketing if they could not share marketing personnel, nor does it address the Commission's correct observation that merely allowing each to market the services of the other would reduce the efficiencies generally associated with joint marketing.[32] These failures illustrate the weakness of AT&T's position.[33]

F. A Separated Affiliate or Joint Venture May Use Marks of a BOC that Are Owned by the BOC's Holding Company. (NPRM, para. 43)

Section 274(b)(6) permits use of a BOC's name, trademark or service mark, where the name or mark is "owned by the entity that owns or controls the [BOC]." Time Warner's suggests that a BOC's separated affiliate or joint venture must be prohibited from using the name, trademarks, or service marks of a BOC "under any circumstances."[34] Apparently, it is disappointed that the

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[30] MCI, at 5.

[31] NPRM, para. 57 (emphasis added).

[32] NPRM, para. 40.

[33] The Commission also should not conclude that the separation requirements applicable to officers, directors and employees apply equally to both the separated affiliate and any electronic publishing joint venture, as urged by MCI. MCI, 4-5. Section 274(b)(5) explicitly applies only to the separation required between a separated affiliate and a BOC. It does not refer to or even mention a joint venture. Thus, the Commission has correctly tentatively concluded that a BOC may share officers, directors, and employees with an electronic publishing joint venture. NPRM, at para. 39; see also, Ameritech, at 12-13.

[34] Time Warner, at 16.

prohibition does not apply where such items are "shared by" with a BOC and its holding company. Be that as it may, Congress has crafted the words of the statute, and its terms do not permit Time Warner's suggestion to be implemented.

First, whether such items are shared by the two entities is irrelevant. Subsection (b)(6) explicitly allows use of names and marks owned by a BOC's holding company. Second, adoption of Time Warner's suggestion would not result in simply implementing the terms of the statute. It would effectively eliminate the exception specifically provided for by Congress. Thus, the Commission should conclude that subsection (b)(6) allows use of any names and marks owned by the holding company, regardless of whether such items are also licensed to or otherwise used by the BOCs. Requests that the statute be rewritten in the fashion requested by Time Warner should be directed to Congress, not the Commission.

G. The General "Hiring and Training" Ban is Subject to Limited Exceptions. (NPRM, paras. 44-45)

Generally speaking, Section 274(b)(7)(A) provides that the BOC may not perform hiring or training of personnel on behalf of a separated affiliate. However, two limited exceptions should apply.[35] First, where a BOC and its separated affiliate engage in joint marketing activities permitted by Section 274(c)(2)(A) and (B), the BOC should be permitted to hire and train marketing personnel so as to effectively carry out these activities.[36] Second, commentors correctly point out that even

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[35] However, this general prohibition, as well as that relating to the performance of purchasing, installation or maintenance of equipment, Section 274(b)(7)(B), as well as that regarding the performance of research and development, Section 274(b)(7)(C), is directed only to the BOC. An affiliate of the BOC is free to perform any of these activities for or on behalf of a separated electronic publishing affiliate. SBC, at 10.

[36] NPRM, at para. 45; SBC, at 9.

outside of the context of permissible joint marketing activities, other services are permitted to be performed by the BOC, including finance, accounting and data processing services, and other general support and administrative services.[37] The Commission should express its approval of both of these principles.

H. A BOC May Purchase, Install and Maintain Transmission and Terminal Equipment Necessary or Incidental to Providing Telephone Service to a Separated Affiliate. (NPRM, para.45)

Section 274(b)(7)(B) generally prohibits a BOC from purchasing, installing or maintaining equipment for a separated affiliate except for telephone service that it provides under tariff or contract. This subsection, however, does not prohibit purchase, installation or maintenance of transmission or terminal equipment necessary or incidental to providing telephone service,[38] and no commentor appears to suggest otherwise.[39] Accordingly, the Commission should permit such necessary and incidental equipment to be provided so long as undertaken in accordance with the transactional requirements of Section 274(b)(3).

I. A BOC Should Not Be Precluded From Undertaking Any Research or Development that "May Potentially Be of Use To" a Separated Affiliate. (NPRM, para. 46)

Section 274(b)(7)(C) provides that a BOC may not perform research and development "on behalf of" a separated affiliate. Several commentors correctly maintain that the Commission should not preclude the BOCs from performing any research that may potentially be of use to a separated

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[37] E.g., U S WEST, at 20.

[38] Cf., SBC, at 10; Ameritech, at 15 (suggesting the authority extends to transmission equipment which "is an integral part of" the BOCs' telephone service provided to a separate affiliate.)

[39] See, Time Warner at 19.

affiliate. These parties correctly reason that BOC-undertaken independent research and development should not be so chilled, and that a BOC should be permitted to share its general research and development findings with its separated affiliate.[40]

While observing that the statute is "clear on its face," Time Warner inconsistently argues that the Commission should prohibit BOCs from sharing any research and development work or results with a separated affiliate under any circumstances.[41] Time Warner's observation defeats its argument. Subsection (b)(7)(C) is clear on its face and does not prohibit the sharing of research and development. Moreover, Time Warner does not adequately address other commentors' concerns that considerable legitimate research and development activities would be unnecessarily curtailed or precluded merely due to the possibility that they may also be of use to a separated affiliate.[42]

J. The General Joint Marketing Prohibitions Are Limited On Their Face. (NPRM, paras. 49-53)

Section 274(c)(1) establishes a general prohibition on a BOC's promotion, marketing, sales or advertising in connection with the provision of electronic publishing. However, as the Commission and several commentors have noted, the provisions of the ban are in some cases limited, and in others inapplicable. Thus, while SBC maintains that the Commission need not adopt extensive rules to implement subsection (c)(1), or even any rules, the Commission should confirm the foregoing limitations of subsection (c)(1) in the event that it determines to clarify any of its provisions.

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[40] Ameritech, at 15; Bell Atlantic, at 6-7; BellSouth, at 14; SBC, at 11-12; U S WEST, at 20; USTA, at 5.

[41] Time Warner, at 19.

[42] E.g., Ameritech, at 15; SBC, at 10-11.

First, the Commission should confirm that permissible joint activities undertaken in accordance with subsection (c)(2) are an exception to the general ban stated in subsection (c)(1).[43] Subsection (c)(1) expressly so provides.

Second, the Commission should confirm the correctness of its tentative conclusion that the term "affiliate" excludes a joint venture,[44] so that the joint marketing prohibitions do not apply at all to electronic publishing joint ventures. As the Commission has noted, section 274(c)(2)(C) expressly permits a BOC to provide marketing-related personnel and services to a joint venture.[45]

Third, the Commission should confirm that the statute imposes no restrictions on a separated affiliate's authority to market and sell services or products of the BOC, or those of any other affiliate or an unrelated party.[46] As YPPA points out, one goal of the Act was to permit customers one-stop shopping to meet all of their telecommunications needs.[47] The Commission's confirmation that a separated affiliate may joint market BOC services and products with its own electronic publishing services would reaffirm the Commission's own support of that goal. It would also confirm the Commission's announced support of the benefits of one-stop shopping and the economies of scope that would be realized if a separated affiliate marketed both its own electronic publishing services with, for example, a BOC's additional line telephone service.[48]

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[43] USTA, at 5.

[44] NPRM, at para. 51.

[45] NPRM, at para. 51; see also, SBC, at 11; BellSouth, at 17.

[46] Bell Atlantic, at 9; NYNEX, at 18; USTA, at 5; YPPA, at 6.

[47] YPPA, at 6.

[48] See, NPRM, at para. 5 (referring to the benefits of economies of scope enjoyed by market (continued...)

Finally, the Commission should confirm that nothing in the Act prevents a BOC's affiliate from performing marketing and sales-related activities as an agent for either or both the BOC or the separated affiliate.[49] The statute does not prohibit a BOC's affiliate from acting as an agent of both the BOC and the BOC's separated affiliate, and the Commission should approve such an arrangement for the same reason that it should confirm a separated affiliate's authority to sell BOC services and products. In both cases, the efficiencies and consumer benefits associated with one-stop shopping are fully realized.

The Commission should not adopt Time Warner's misplaced suggestion that Section 274 constructs "a fire wall around the separated affiliate or joint venture and all other BOC enterprises."[50] It is only true, as Time Warner suggests, that under Section 274(a) no BOC or any affiliate may engage in the provision of certain electronic publishing. However, the general joint marketing ban of Section 274(c)(1) applies exclusively to "a Bell operating company." An affiliate of a BOC remains free to engage in activities that may be unavailable to the BOC, such as the "promotion, marketing, sales, or advertising" activities noted in subsection (c)(1) that are related to the provision of electronic publishing. Time Warner's reading of various statutes relating to the definitions of "Bell operating company" and "affiliate" are wrong.[51]

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[48](...continued)
entrants engaged in complimentary businesses), and 6 (recognizing the benefits of one-stop shopping); see also, SBC, at 12, n.10 (indicating other instances of Commission's approval of the one-stop shopping model as beneficial both to the public and the industry.

[49] USTA, at 5; see also, SBC, at 11.

[50] Time Warner, at 28 (emphasis added).

[51] Indeed, the definition of a "Bell operating company" in Section 274(i)(10) would encompass (continued...)

K. The Joint Marketing Provisions of the Statute Reflect Comprehensive Grants of Authority to Advance the Efficiencies and Convenience of One-Stop Shopping. (NPRM, paras. 54-58)

Section 274(c)(2) permits three types of joint marketing activities: in-bound telemarketing and referrals; joint promotion, marketing, sales and advertising; and the direct providing of personnel and services. If the Commission must adopt rules in this proceeding, its opportunity to also reaffirm its support of the efficiencies and customer conveniences of "one-stop shopping" lies here. The Commission should not miss that opportunity.

In-bound Telemarketing/Referral Services -- Section 274(c)(2)(A) allows the BOC to provide "in-bound telemarketing" for, among other entities, a separated affiliate. Section 274(i)(7) defines "in-bound telemarketing" as "the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call."

AT&T claims that subsection (c)(2)(A) allows BOCs only to refer a customer who initiates a request for information about electronic publishing services to its separated affiliate.[52] To the contrary, the in-bound telemarketing freedoms granted to BOCs are not limited to a "referral." The Commission should conclude that the separately stated term "in-bound telemarketing" encompasses a full range of services beyond a mere referral that would allow BOCs to promote and sell electronic publishing services.

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[51](...continued)
only Southwestern Bell Telephone Company ("SWBT"), but not "an affiliate of" SWBT. See, Section 153(4)(a) & (c), and also any company "owned or controlled" by SWBT. To the extent that a given affiliate of SWBT would not be a BOC under Section 153(4) nor "owned or controlled by" SWBT, the affiliate would not be a BOC for purposes of the joint marketing prohibitions stated at Section 274(c)(1).

[52] AT&T, at 20.

For example, subsection (c)(2)(A) allows a BOC to disseminate written material or advertise a BOC call-in number to which its potential customers might respond and thus initiate a call to the BOC. At that point, the BOC may also promote the publisher's service, quote prices, close a sale, and forward all such information to its separated affiliate for implementation. In addition, the BOC may market and sell its own services that would complement those of its separated affiliate, e.g., an additional line. All of these activities are encompassed by the "in-bound telemarketing" authority granted BOCs by Congress.[53]

The Commission is not authorized to impose restrictions on the type of in-bound telemarketing services a BOC may provide to its separated affiliates. Of course, as prescribed by subsection (c)(2)(A), the BOC must make such services available to all electronic publishers on request, on nondiscriminatory terms. In light of this statutory safeguard, Ameritech correctly observes that the Commission's implementation of this subsection "should be focused on making the widest range of in-bound telemarketing BOC services available to electronic publishers rather than restricting the BOC's provision of services."[54]

Teaming or Business Arrangements -- Section 274(c)(2)(B) permits BOCs to engage in "teaming" or "business arrangements" to provide electronic publishing under three specifically delineated conditions. Commentors generally support the Commission's observation that this provision "appears to permit a BOC to participate any type of business arrangement to engage in

[53] SBC, at 13-14; Ameritech, at 19-20; NYNEX, at 20-21.

[54] Ameritech, at 21.

electronic publishing" so long as the BOC complies with these conditions.[55] It appears that no commentor seriously opposes the Commission's conclusion.[56]

With the exception of the specific nondiscriminatory obligations imposed by subsection (c)(2)(B), Congress determined to specifically not limit the variety of marketing-related activities and services which the BOC may engage in for the benefit of its separated affiliate. Accordingly, the Commission should not frustrate Congress' intent by adopting any rules that would limit the freedoms conferred by Congress. Instead, the Commission should give full effect to subparagraph (B) and interpret it to permit a BOC and its separated affiliate to jointly promote, market, and sell their respective services pursuant to any form of business arrangement consummated between them, as Congress intended. No competitive imbalance would be created, because any arrangements struck with a separated affiliate or other electronic publishers must reflect nondiscriminatory terms and conditions.[57]

III. THE TYPES OF CPE, BILLING AND COLLECTION AND SALES AGENCY ACTIVITIES THAT SWBT SEEKS TO UNDERTAKE DO NOT CONSTITUTE THE "PROVISION" OF ALARM MONITORING SERVICES. (NPRM, para. 71)

Section 275(a)(1) prohibits a BOC and its affiliate from engaging in but one activity: the "provision" of alarm monitoring services. Upon the filing of these and other parties' reply comments, the Commission should move swiftly to conclude that "provision" does not mean,

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[55] NPRM, at para. 56; see, SBC, at 14-15; Ameritech, at 21-22; NYNEX, at 21-22.

[56] There does not appear to be any discussion of Section 274(c)(2)(B) in AT&T's comments devoted to joint marketing. AT&T, at 19-21. Moreover, Time Warner agrees that BOCs are permitted to engage in teaming or business arrangements to provide "facilities and telephone service" without further explanation. Time Warner, at 24.

[57] Ameritech, at 22; NYNEX, at 22-23.

whether individually or collectively, a BOC's (1) sale, installation and maintenance of alarm CPE, (2) rendering of billing and collection services to an independent alarm monitoring service provider, or (3) entry into a non-exclusive sales agency relationship with such a provider. Despite the protestations of one commentor, there is no record basis on which to conclude otherwise.

AICC has long since conceded that, under Section 275, the BOCs are authorized to provide sales, installation and maintenance of alarm monitoring CPE.[58] No party in this proceeding has argued to the contrary. Thus, the record is clear and uncontroverted on this point.

Furthermore, SBC and SWBT have shown that providing billing and collection services to an alarm monitoring provider does not constitute "provision" of that service,[59] and AICC has no objection to a BOC's being compensated for billing and collection services.[60] No one could seriously contend that billing and collecting for a service is tantamount to the provision of that service.[61] As one commentor aptly put it, "[t]he LEC providing billing and collection service to an alarm monitoring company is no more the provider of the service billed for than is Visa the provider of food service when it bills for a restaurant."[62] On this point, therefore, the record is once again clear and uncontroverted.

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[58] SWBT's Comparably Efficient Interconnection Plan for Security Service, CC Docket Nos. 85-229, 90-623, and 95-20, filed April 4, 1996 ("SWBT's CEI Plan"), Comments of AICC, filed May 24, 1996, at 3, n. 6.

[59] SBC, at 19, n. 14 & Attachment A, at 6-7, Attachment B, at 3; see also, Bell Atlantic, at 13.

[60] SWBT's CEI Plan, Comments of AICC, filed May 24, 1996, at 13, n. 17.

[61] Indeed, SWBT currently provides billing and collection services relating to alarm monitoring service providers' charges. SBC, Attachment B, at 3.

[62] Ameritech, at 27.

Equally clear is that a sales agent's undertaking to market the services of an independent alarm service provider, does not run afoul of Section 275.[63] SBC's initial comments in this matter identified a host of circumstances showing that the Congress, FCC, courts, and state legislatures regard the activities of "sales" and "provision" as separate and distinct.[64] Similarly, whether in the context of Centrex, CPE Sales Agency, cellular or otherwise, a sales agent is not regarded as the provider of the service being sold. Rather, the principal on whose behalf the agent acts is the provider of the service.[65] There is no reason that alarm monitoring should be treated any differently.

In addition, the Commission need not render an advisory opinion on whether BOCs should be prohibited from holding themselves out as alarm monitoring service providers or from creating confusion as to who is providing the actual alarm monitoring service.[66] No such facts are alleged to have occurred, and the facts of SWBT's CEI Plan (to which this point is apparently directed) are completely to the contrary. Under the plan, the customer would maintain a direct customer-provider relationship with the alarm monitoring service provider, ensured by, among other things: the formation of a separate contract, the rendering of separate and distinct charges on SWBT's bill in the name of the provider, a clear identification of the provider on all promotional and other informational material, and the directing of all customer inquiries regarding the alarm monitoring

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[63] Ameritech, at 27; Bell Atlantic, at 13.

[64] SBC, at 19-20.

[65] Id.; Ameritech, at 27. Indeed, were it otherwise, perhaps thousands of cellular sales agents and other agents would face rules and regulations otherwise applicable only to "providers" of services.

[66] AICC, at 17.